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8 **ZIEVE, BRODNAX & STEELE, LLP**

9 Scott D. Crawford, Esq. #086448

10 One World Trade Center

11 121 Southwest Salmon St., 11th Floor

12 Portland, OR 97204

13 503-946-6558

14 scrawford@zbslaw.com

15 **UNITED STATES BANKRUPTCY COURT**

16 **DISTRICT OF OREGON**

17 **In re:**

18 Thomas Edward Bray and Linda Joyce Bray,

19 Debtor(s),

20 **Case No.:** 15-33230-tmb13

21 **Chapter 13**

22 **DECLARATION OF DEFAULT**
23 **UNDER ADEQUATE**
24 **PROTECTION ORDER**

25 I, Raymond Valderrama, declare and state as follows:

26 1. As to the following facts, I know them to be true. Each is based upon my
27 personal knowledge, unless otherwise indicated. If called upon to testify in this or any other
28 action, I could and would testify competently thereto.

2. I am employed by BSI Financial Services, Inc., as servicing agent on behalf of
Chalet Properties III, LLC ("Movant").

1 3. I have access to the bankruptcy books and records that pertain to loans and
2 extensions of credit given to Debtors concerning the real property located at **5519 SE 56th**
3 **Avenue, Portland, Oregon 97206** ("Property"). I have personally worked on these books,
4 records and files, and as to the following facts, I know them to be true of my own knowledge or I
5 have gained knowledge of them from the business records of Movant, which were made at or
6 about the time of the events recorded, and which are maintained in the ordinary course of
7 Movant's business at or near the time of the acts, conditions or events to which they relate. Any
8 such document was prepared in the ordinary course of business of Movant by a person who had
9 personal knowledge of the event being recorded and had or has a business duty to record
10 accurately such event. The business records are available for inspection and copies can be
11 submitted to the Court if required.

12 4. I have reviewed the Adequate Protection Order (collectively "Order") entered on
13 December 15, 2015. A copy of the Order is attached hereto as Exhibit "1" and incorporated
14 herein by reference. I have personal knowledge as to the status of Debtors' loan and whether the
15 Debtors have complied with the requirements of the Order.

16 5. Pursuant to paragraph 1 of the Order, the Debtors are obligated to maintain their
17 current on-going payments and stipulation payments to Movant commencing with the May 1,
18 2015 payment.

19 6. Debtors defaulted under the Order by failing to make the following payments to
20 Movant as required as of April 29, 2019:

21 1 regular monthly payment at \$1,718.88 (7/1/2016)	\$1,718.88
22 12 regular monthly payments at \$1,747.40 (8/1/2016-7/1/17)	\$20,968.80
23 9 regular monthly payments at \$1,744.96 (8/1/17-4/1/19)	\$15,704.64
24 Attorney Fees	\$275.00
25 Less funds held in suspense	<\$1,718.64>
26 Total Amount Due	\$36,948.68

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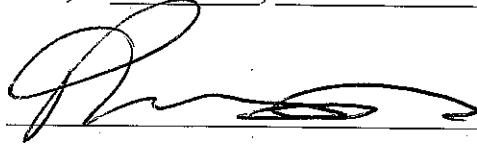
1 7. On March 20, 2019 Movant caused a written notice of default ("Notice")
2 identifying the default referenced in paragraph 6 above to be served on Debtors and Debtors'
3 counsel via U.S. regular. A true and correct copy of the Notice is attached hereto as Exhibit "2"
4 and incorporated herein by this reference.

5 8. As of April 29, 2019, Debtors have failed to cure the default set forth in the
6 Notice. Thus, Debtors are in material default under the Order for failing to cure the default
7 within the time specified in the Order.

8 9. Based upon Debtors' failure to cure the default, Movant respectfully requests that
9 the Court enter an Order Terminating the Automatic Stay in favor of Movant.

10 I declare under penalty of perjury that the foregoing is true and correct.


11 Executed this 21st day of May, 2019, at Irvine, CA.

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14 Name: Raymond Valderrama

15 Title: Assistant Vice President
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Below is an Order of the Court.



PETER C. MCKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re
Thomas Edward Bray
Linda Joyce Bray

) Case No. **15-33230-pcm13**
)
) ORDER, DRAFTED ON: **12/03/15**,
) RE: RELIEF FROM (Check ALL that apply):
) ☒ DEBTOR STAY ☐ CODEBTOR STAY
) CREDITOR: **Ditech Financial, LLC**
) CODEBTOR: _____

Debtor(s)

The undersigned, **Nathan F. Smith**, whose address is **2112 Business Center Drive**
Second Floor, Irvine, CA 92612, Email address is **nathan@mclaw.org**,
Phone No. is **949-252-9400**, and any OSB # is **120112**, presents this Order based upon:

- ☒ The completed Stipulation of the parties located at the end of this document.
- ☐ The oral stipulation of the parties at the hearing held on _____.
- ☐ The ruling of the court at the hearing held on _____.
- ☐ Creditor certifies any default notice required by pt. 5 of the Order re: Relief from Stay entered on _____ was served, and that debtor has failed to comply with the conditions of that order.
- ☐ Creditor certifies that no response was filed within the response period plus 3 days to the Motion for Relief from Stay that was filed on _____ and served on _____.

IT IS ORDERED that, except as provided in pt. 4 below, the stay existing pursuant to 11 USC §362(a) shall remain in effect as to the property described below (hereinafter "the property"):

☐ Personal property described as (e.g., 2001 Ford Taurus):

☒ Real property located at (i.e., street address):

5519 SE 56th Avenue
Portland, OR 97206

☐ [Optional UNLESS In Rem Relief Granted] Exhibit A attached hereto is the legal description of the property.

IT IS FURTHER ORDERED that the stay is subject to the conditions marked below:

☒ 1. **Regular Payment Requirements.**

☒ a. Debtor(s) shall deliver regular monthly payments in the amount of \$ 1,718.88 commencing 12/01/15 to Creditor at the following address:

Ditech Financial LLC, PO Box 0049, Palatine IL 60055-0049

☐ b. The Chapter 13 trustee shall immediately pay and disburse to Creditor the amount of \$ _____ per month from funds paid to the trustee by Debtor(s), and continue each month until the plan is confirmed, at which time the plan payment terms shall control. Payments made by the trustee under this order shall be deemed to be payments under the plan for purposes of the trustee's collection of percentage fees.

☐ c. Debtor(s) shall pay to the trustee any and all payments required to be paid under the terms of the Chapter 13 plan.

☒ 2. **Cure Payment Requirements.** Debtor(s) shall cure the post-petition default of \$ 5,213.52 consisting of **Regular payments from 8/01/2015 to 11/01/2105 at \$1,718.88 each, less \$1,622.00 suspense plus \$1026.00 directly to the creditor within 14 days from the entry of this order.**

(e.g., \$ _____ in payments and \$ _____ in late charges for April - June, 2002), as follows:

☐ a. In equal monthly installments of \$ _____ each, commencing _____ and continuing thereafter through and including _____.

☐ b. By paying the sum of \$ _____ on or before _____, and the sum of \$ _____ on or before _____.

☐ c. Other (describe): _____

☐ 3. **Insurance Requirement(s).** Debtor shall maintain insurance on the property at all times as required by the security agreement, naming _____ as the loss payee.

On or before _____ Debtor(s) shall provide counsel for Creditor with proof of insurance.

☐ 4. **Stay Relief and Codebtor Stay Relief without Cure Opportunity.**

☐ a. Upon default in the conditions in pt(s). _____ Creditor may file and serve a certificate of non-compliance specifying the default, together with a proposed order terminating the stay to allow Creditor to foreclose on, and obtain possession of, the property to the extent permitted by applicable nonbankruptcy law, which the Court may grant without further notice or hearing.

☐ b. The stay is terminated to allow Creditor to foreclose on, and obtain possession of, the property to the extent permitted by applicable nonbankruptcy law, provided that a foreclosure sale shall not occur prior to _____.

☐ c. Creditor is granted relief from stay effective _____ to foreclose on, and obtain possession of, the property, to the extent permitted by applicable nonbankruptcy law.

☐ d. Creditor is granted relief from stay to foreclose on, and obtain possession of, the property, to the extent permitted by applicable nonbankruptcy law.

☐ e. If a Creditor with a senior lien on the property is granted relief from stay, Creditor may file and serve a certificate identifying the senior lien holder and a proposed order terminating the stay, which the Court may grant without further notice or hearing.

☐ f. Creditor is granted relief from stay to _____.

☐ g. Creditor is granted "in rem" relief from stay with respect to the real property described above and in Exhibit A. This order shall be binding in any other case filed under 11 USC purporting to affect such real property filed not later than two (2) years after the date of the entry of this order unless the bankruptcy court in the subsequent case grants relief from this order. Any governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

- ☐ h. Creditor is granted relief from the codebtor stay, as it applies to the codebtor(s) named in the caption above, to enforce the terms of the contract and collect the deficiency balance.
- ☒ 5. **Stay Relief with Cure Opportunity.** Upon default in the checked condition(s) in pt(s). 1 - 3, Creditor shall serve written notice of default on ☒ Debtor(s) and ☒ Attorney for Debtor(s) that gives Debtor(s) 15 calendar days after the mailing of the notice to cure the default. If Debtor(s) fails to cure the default in accordance with this paragraph, then Creditor shall be entitled to submit a proposed order terminating the stay, which the Court may grant without further notice or hearing.
- ☐ a. The notice of default may require that Debtor(s) make any payment(s) that becomes due between the date the notice of default is mailed and before the cure deadline.
- ☒ b. The notice of default may require Debtor(s) to pay \$ 75.00 for the fees and costs of sending the notice.
- ☒ c. Only 2 notices of default and opportunity to cure are required per ☐ year (calculated from date of entry of this order), ☒ during the remainder of this case, or ☐ (describe):
- ☐ 6. **Amended Proof of Claim.** Creditor shall file an amended proof of claim to recover all accrued post-petition attorney fees and costs and (describe):
- ☒ 7. **Miscellaneous Provisions.**
- ☐ a. If Creditor is granted relief from stay, the 14-day stay provided by Fed. Rule Bankr. Proc. 4001(a) shall be waived.
- ☒ b. Any notice that Creditor's counsel shall give to Debtor(s)/Codebtor, or attorney for Debtor(s)/Codebtor, pursuant to this order shall not be construed as a communication under the Fair Debt Collection Practices Act, 15 USC §1692.
- ☐ 8. A final hearing on Creditor's motion for relief from stay shall be held on _____ at _____ in _____.
- ☐ 9. Other:

PRESENTED, AND CERTIFIED, BY:

###

/s/ Nathan F. Smith

IT IS SO STIPULATED:

Creditor's Attorney:

/s/Nathan F. Smith

Name: Nathan F. Smith

OSB#: _____

NO OBJECTION TO ORDER BY CASE TRUSTEE:

By: /s/ Jack Fisher

Debtor(s)'s Attorney:

/s/Douglas Ricks

Name: Douglas Ricks

OSB#: 044026

Codebtor's Attorney:

Name: _____

OSB#: _____



March 20, 2019

VIA U.S. REGULAR MAIL

Douglas R Ricks
319 SW Washington St #520
Portland, OR 97204

Re: In re Thomas Edward Bray and Linda Joyce Bray
Loan no. ****5890/ Our File No. 19000130
Case No. 15-33230-tmb13

Dear Mr. Ricks:

This letter shall serve as notice of default under the terms of the Order On Stipulation For Adequate Protection ("Order") entered in your client's case on December 15, 2015 in favor of our client, BSI Financial Services, Inc. The total delinquent mortgage payments are as follows:

1 regular monthly payment at \$1,718.88 (7/1/16)	\$1,718.88
12 regular monthly payments at \$1,747.40 (8/1/16-7/1/17)	\$20,968.80
8 regular monthly payments at \$1,744.96 (8/01/17-3/1/19)	\$13,959.68
Attorney Fees	\$75.00
Less funds held in suspense	<\$1,718.64>

Total arrears payments **\$35,003.72**

Please remit **\$35,003.72** to BSI Financial Services, Inc within fifteen (15) days from the date of this Notice pursuant to the Stipulation for Adequate Protection. In the event your clients fail to tender said funds within fifteen days, our office will submit a declaration regarding the default along with an order for relief to the court.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact our office.

Sincerely,
ZIEVE, BRODNAX & STEELE, LLP
/s/ Scott D. Crawford
Scott D. Crawford, Esq.

cc: Thomas Edward Bray and Linda Joyce Bray, Debtors
5519 SE 56th Ave., Portland, OR 97206

www.ZBSLAW.com
Phone 206-209-0375 | Fax 206-374-2252
11335 NE 122nd, Suite 105 Kirkland, WA 98034

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15 **UNITED STATES BANKRUPTCY COURT**
16 **DISTRICT OF OREGON**
17

18 **In re:**

19 Thomas Edward Bray and Linda Joyce Bray,
20
21

22 Debtor(s),
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Case No.: 15-33230-tmb13

Chapter 13

CERTIFICATE OF SERVICE

23 I, **Michele Dapello**, certify that I am a resident of Orange County, California. I am over
24 the age of 18 years and am not a party to the within action. My business address is 30 Corporate
25 Park, Suite 450, Irvine, California 92606.
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1 On **May 28, 2019**, I served the within **DECLARATION OF DEFAULT UNDER**
2 **ADEQUATE PROTECTION ORDER** on all interested parties in this proceeding by placing a
3 true and correct copy thereof enclosed in a sealed envelope with postage prepaid in the United
4 States Mail at Irvine, California, addressed as follows:

5 **DEBTORS**

6 Thomas Edward Bray
7 Linda Joyce Bray
8 5519 SE 56th Ave
9 Portland, OR 97206

10 **DEBTORS' ATTORNEY**

11 DOUGLAS R RICKS
12 319 SW Washington St #520
13 Portland, OR 97204

14 **CHAPTER 13 TRUSTEE**

15 Wayne Godare
16 222 SW Columbia St #1700
17 Portland, OR 97201

18 **U.S. TRUSTEE**

19 US Trustee, Portland
20 620 SW Main St #213
21 Portland, OR 97205

22 I certify under penalty of perjury the foregoing is true and correct.

23 Executed on **May 28, 2019** at Irvine, California.

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_____/s/ Michelle Dapello

Michele Dapello